

REMARKS

In the outstanding Office Action, the Examiner has rejected claims 36-44 as being obvious over USP 5,346,486 to Osborn. Applicants gratefully acknowledge the Examiner's statement that claims 45 and 46 would be allowed if rewritten in independent form.

CLAIMS 45 and 46:

In response, Applicants have amended claim 45 by rewriting it in independent form, minus the recitation of the dimensions of the anchoring means¹. Accordingly, claims 45 and 46 are in condition for allowance and notice to that effect is earnestly solicited.

CLAIMS 35-44 and 47:

At the outset, Applicants submit that Osborn fails to disclose or suggest all of the limitations of claim 35, namely the dimensional recitations as acknowledged by the Examiner, but also the recitation of "mating fastener elements." In particular, the fastener elements 40 of Osborn are both disposed on the same side of the flaps 28, and are configured to engage either the undergarment itself or the other flap – *not* to engage the opposite fastener element (Osborn at Col. 7, lines 26-36 – fasteners "face the outside of the wearer's undergarment"). Indeed, once the flaps are folded under the crotch portion, it would not be possible for the fastener elements to *mate* since they would be separated by one of the flaps by virtue of the fastener elements facing the same direction. Applicants submit that the Examiner's rejection should be withdrawn on this basis alone.

The Examiner acknowledges, however, that Osborn also does not disclose the claimed

¹ Applicants note that the Examiner has asserted that the dimensions did not provide a patentable distinction over the prior art with respect to claim 35.

dimensions for the fastener elements as recited in claim 35. Instead, the Examiner has asserted that the dimensions would be obvious to one of skill in the art. Applicants respectfully disagree.

First, this case is easily distinguished from *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), *cert. denied*, 469 U.S. 830, 225 USPQ 232 (1984) cited by the Examiner. In particular, and contrary to the assertions of the Examiner, the claimed device, with its recited dimensions, would function or perform differently than the device of Osborn. As set forth in the specification:

The range of adjustment is intentionally limited. The range provided in a given pad is large enough to make it easy for the user to install the product, but small enough to ensure that it is always installed so that it will function as intended. . . . The range of lateral adjustment is determined by the corresponding width dimensions (Wl) of the loop element 58 and the width dimensions (Wh) of the hook elements 60. . . . The configuration of the sanitary napkin of the invention, *including the range of adjustment provided for the fasteners 58 and 60*, is such that the when the garment attachment panels 14 and 16 are properly fastened, the panty crotch portion 130 is always confined beneath the pad. (Specification at p. 13, line 41 to p. 14, line 15.)

In essence, Applicants have discovered that the recited dimensions achieve the proper positioning of the absorbent pad in relation to the undergarment. In contrast, Osborn teaches away from any dimensional requirements for the fastener elements. Indeed, as mentioned above, the fastener elements 40 of Osborn are both disposed on the *same side* of the flaps 28, and are configured to engage either the undergarment itself or the other flap – *not* to engage the opposite fastener element. Accordingly, the relative size of the fastener elements 40 is irrelevant to Osborn, and there is no suggestion to one of skill in the art to constrain the fastener elements to any particular dimension.

On this same point, Applicants further submit that Osborn also does not disclose or suggest in any way that the fastener elements “establish a predetermined deflection of said side

edges.” Indeed, Osborn is silent as to any actual or desired deflection of the pad. For all of these reasons, the Examiner has not established a *prima facie* case of obviousness and the claims should be passed to allowance.

Finally, Applicants have added new claim 47 which recites that “said means for anchoring said free portions are disposed on a bodyside surface of one of said garment attachment panels and on a garment side surface of the other of said garment attachment panels.” As noted above, Osborn discloses that the fastener elements are disposed on the *same* side of the attachment panels (see FIGS. 1-5), not opposite sides thereof.

CLAIM 48:

Claim 48 is similar to claim 35, but recites that “said means for anchoring said free portions being configured, on one of said garment attachment panels, in a first width, and on the other of said garment attachment panels in a second width, wherein said second width is greater than said first width.” Osborn discloses that the fastener elements 40 have the same width, and there is no suggestion to modify the widths for all of the reasons set forth above with respect to claim 35. Accordingly, claim 48 should also be passed to allowance on the next Office Action. In addition, as set forth above, Osborn does not disclose or suggest “mating fasteners.”

CLAIMS 49-51:

Claim 49 recites that “said side edges are deflected with respect to said central portion as said attachment panels are moved from said unsecured position to said secured position.” As set forth above, Osborn does not disclose or suggest the deflection of the side edges as the attachment panels are secured.

In addition, claim 49 recites “fastening elements secured one to the other,” which is not disclosed or suggested by Osborn as set forth above. Accordingly, claim 49 should be passed to allowance.

New claim 50 recites that “the second width [of the absorbent] is greater than or equal to said first width [of said crotch portion.]” Osborn does not disclose or suggest this recitation.

CONCLUSION

For all of the above reasons, the Application appears to be in condition for allowance, both as to form and over the prior art. Such action is courteously solicited. Applicants previously paid for twenty claims, including three independent claims. After amendment, this application has seventeen claims, including four independent claims. Applicants have enclosed a check in the amount of \$200 for the additional independent claim.

Respectfully submitted,



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